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CHONG LAI KENG v. PRUDENTIAL ASSURANCE MALAYSIA BHD

HIGH COURT MALAYA, SHAH ALAM
JAMHIRAH ALI JC
[CIVIL SUIT NO: BA-22NCC-21-02-2022]
B 23 OCTOBER 2023

Abstract – *The uberrimae fidei principle, entrenched in Part 3, Schedule 9 of the Financial Services Act 2013, imposes consumers with a duty of disclosure and representation when engaging in, modifying or renewing insurance contracts with insurers. This duty requires consumers to exercise reasonable care to prevent any misrepresentation during the pre-contractual phase. Specifically, consumers have an obligation to ensure the accuracy and completeness of their responses to the insurer's inquiries. In cases where a consumer deliberately or recklessly makes a misrepresentation and conceal material facts, the insurer has the authority to void the contract of insurance and decline any claim settlements.*

INSURANCE: *Claim – Repudiation – Life assured acquired two life insurance policies from insurer – Wife named as nominee of both life insurances – Wife submitted claims for insurance policies following sudden death of life assured – Insurer discovered that life assured held three other life insurance policies with another insurer and such policies were already in force when life assured applied for two policies from insurer – Whether there was misrepresentation by life assured by not disclosing pre-existing policies – Whether life assured had committed fraudulent non-disclosure – Whether insurer entitled to repudiate claim – Whether two policies null and void from inception – Financial Services Act 2013*

CONTRACT: *Contract of insurance – Repudiation of death claim – Life assured acquired two life insurance policies from insurer – Wife named as nominee of both life insurances – Wife submitted claims for insurance policies following sudden death of life assured – Insurer discovered that life assured held three other life insurance policies with another insurer and such policies were already in force when life assured applied for two policies from insurer – Pre-contractual duty of disclosure – Principle of uberrimae fidei – Whether there was fraudulent non-disclosure and fraudulent misrepresentation by life assured – Whether contract of insurance null and void – Whether insurer entitled to repudiate contract – Financial Services Act 2013*

The plaintiff's husband ('life assured') had applied and/or proposed to the defendant for a life insurance with a basic sum assured/death benefit of RM2 million ('first PAMB proposal'). Subsequently, the defendant issued a policy to the life assured for the first PAMB proposal form ('first PAMB policy'). Through another proposal, the life assured applied and/or proposed to the defendant for another life insurance with a basic sum assured/death benefit

of RM2 million ('second PAMB proposal'). The defendant then issued a policy to the life assured for the second PAMB proposal form ('second PAMB policy'). Under the first and second proposal PAMB forms, (i) the plaintiff was named as the nominee of the life insurance policies applied for; and (ii) the defendant had expressly informed the life assured of his pre-contractual duty of disclosure. In addition to the first and second PAMB policies, the life assured had also acquired seven other policies from the defendant. The sudden death of the life assured gave rise to the present suit. Five days after the life assured's sudden death, the plaintiff submitted her claims for eight separate policies to the defendant. During the process of handling and assessing the death claim, the defendant discovered that (i) the life assured held three life insurance policies with AIA Berhad ('AIA') with a sum of RM1.5 million ('first AIA policy'), RM1 million ('second AIA policy') and RM1 million ('third AIA policy') ('three AIA policies'), respectively; (ii) the first and second AIA policies were already in force at the time of the life assured's application for the first PAMB policy. The three AIA policies were already in force at the time the life assured applied for the second PAMB policy; and (iii) the three AIA policies had been settled and paid out. Consequently, the defendant repudiated the plaintiff's claim on the grounds that: (i) despite having full knowledge of his pre-existing three AIA policies at the time when he was applying for the first and second PAMB policies, the life assured failed to disclose these existing policies in the first and second PAMB proposals; (ii) the existence of the three AIA policies was a relevant and/or material fact which the life assured had fraudulently omitted and/or suppressed. Therefore, the life assured had made fraudulent misrepresentations of material facts in, *inter alia*, the first and second PAMB proposals; and (iii) the first and second PAMB policies were null and void from their inception. The plaintiff's appeal to the defendant proved futile. Hence, the plaintiff filed the present suit to reinstate the first and second PAMB policies. The issues that arose for adjudication were: (i) whether the defendant was entitled to repudiate the plaintiff's death claim, made under the first and second PAMB policies and declare the two policies as null and void from their inception, which had been enforced for more than two years before the death of the life assured due to the life assured's fraudulent non-disclosure and/or fraudulent misrepresentation, in accordance with para. 13, Division 1, Part 3 of Schedule 9 of the Financial Services Act 2013 ('FSA'); (ii) whether there was misrepresentation by the life assured by not disclosing the existence of the three AIA policies; and (iii) whether the life assured had committed fraudulent non-disclosure.

Held (dismissing claim with costs):

(1) Pursuant to para. 13, Division 1, Part 3 of Schedule 9 of the FSA, when a life insurance contract has been in force for a period exceeding two years during the insured's lifetime, such a contract could not be avoided by the defendant on the grounds that a statement made or omitted in the

insurance proposal, or in a report from a doctor, referee, or any other person, or in a document leading to the issuance of the life policy was inaccurate, false, or misleading unless the defendant could demonstrate that the statement pertained to a material matter or suppressed a material fact and that it was fraudulently made or omitted to be made by the life assured. Furthermore, para. 5 of Schedule 9 of the FSA, which pertained to the pre-contractual duty of disclosure for consumer insurance contracts, imposed a statutory duty on the consumer to exercise reasonable care in avoiding any misrepresentation to the insurer. This duty was especially significant when responding to specific questions posed by the insurer, which were essential in the insurer's determination of whether to accept the risk and in establishing the applicable rates and terms. The principle of *uberrimae fidei* remained applicable to the parties involved in an insurance contract and, based on this principle, the life assured, as the consumer, bore the duty of utmost good faith, necessitating full disclosure of all material facts within his knowledge. The existence of the three AIA policies constituted a 'material fact'; their disclosure would have had a negative impact on the defendant's underwriting decision. If the defendant had been aware of the three AIA policies, they would not have issued the policies in question. (paras 34, 48 & 49)

(2) Any ordinarily prudent individual would have recalled and disclosed the existence of the three AIA policies, taking into consideration the proximity and contemporaneous nature of the dates between the AIA and PAMB policies. It would have been inconceivable for a person of sound mind to overlook such substantial policies, which had been recently applied for. The first and second AIA policies had already been issued by AIA when the life assured made an application for the first PAMB policy. Furthermore, all three AIA policies, with a combined value of RM3.5 million, had been issued by the time the life assured applied for the second PAMB policy and, at that juncture, the first PAMB policy had also been issued. Therefore, these undisputed facts unmistakably indicated a deliberate suppression and/or concealment of material facts by the life assured. There was an intentional misrepresentation on the part of the life assured when he completed the first and second PAMB proposals without disclosing that he had already proposed and/or obtained the three AIA policies. (para 62)

(3) The life assured had intentionally concealed his proposals for the three AIA policies, despite being directly questioned about them when he applied for the PAMB policies. Given that this action was a deliberate, premeditated and wilful act on the part of the life assured, it could be established that the life assured acted fraudulently. It was also pertinent to note that the plaintiff made the respective claims within five days after

the life assured's demise. The plaintiff possessed knowledge of all the policies acquired by the life assured. This clearly indicated that the life assured provided her with the information regarding each policy and thus the life assured was aware and had knowledge of the existence of the three AIA policies. Based on the sequence of events, it was evident that there was active concealment of a fact by one having knowledge or belief of the fact on the part of the life assured *viz*. the three AIA policies. (paras 77 & 83)

(4) The plaintiff failed to prove her claim on a balance of probabilities. The defendant was entitled to repudiate the plaintiff's claim on the two PAMB policies because of the life assured's fraudulent non-disclosure and fraudulent misrepresentation in accordance with the provisions of the FSA. (para 84)

Case(s) referred to:

CGU Insurance Bhd. v. Asean Security Paper Mills Sdn Bhd [2006] 2 CLJ 409 CA ***(refd)***
He-Con Sdn Bhd v. Bulyah Ishak & Anor And Another Appeal [2020] 7 CLJ 271 FC ***(refd)***
Leong Kum Whay v. QBE Insurance (M) Sdn Bhd & Ors [2006] 1 CLJ 1 CA ***(refd)***
PJTV Denson (M) Sdn Bhd & Ors v. Roxy (Malaysia) Sdn Bhd [1980] 1 LNS 55 FC ***(refd)***
RHB Bank Bhd v. Kwan Chew Holdings Sdn Bhd [2010] 1 CLJ 665 FC ***(refd)***
Samuel Naik Siang Ting v. Public Bank Bhd [2015] 8 CLJ 944 FC ***(refd)***
Sinnaiyah & Sons Sdn Bhd v. Damai Setia Sdn Bhd [2015] 7 CLJ 584 FC ***(refd)***
Takako Sakao v. Ng Pek Yuen & Anor [2010] 1 CLJ 381 FC ***(refd)***
Toh Sek Cheong v. Great Eastern Life Assurance (M) Bhd [2016] 1 LNS 1569 HC ***(refd)***
Ulaganathan Muthiah v. Prudential Assurance Malaysia Bhd [2020] 9 CLJ 435 HC ***(refd)***

Legislation referred to:

Contracts Act 1950, s. 17
Financial Services Act 2013, paras 5(9), 6(2), 7(8), 13(3), Schedule 9

For the plaintiff - Ng Kia Nam & Koay Li Xian (PDK); M/s Ng Kia Nam & Partners
For the defendant - Wong Hok Mun & Koh Pei Siah; M/s Azim, Tunku Farik & Wong

Reported by Najib Tamby

JUDGMENT

Jamhirah Ali JC:

Introduction

[1] The plaintiff was the wife of Than Poo Ling, the life assured (referred to as "the life assured"). It was the life assured's unfortunate passing that had given rise to this suit.

[2] When the plaintiff submitted her claim for the two policies acquired from the defendant by the life assured, the defendant repudiated the claim and declared the policies null and void from their inception. The grounds for this were alleged fraudulent non-disclosure and/or suppression of material facts by the life assured at the time of purchasing the two policies.

[3] Hence, the plaintiff filed this action against the defendant to reinstate the two life policies valued at RM4 million, which were acquired by the life assured and for which she had been appointed as the nominee.

Brief Facts Leading To This Action

[4] On 8 September 2016, the life assured had applied and/or proposed a proposal form bearing No. 104241190 to the defendant for life insurance with a basic sum assured/death benefit of RM2 million (PAMB proposal 1). Subsequently, on 27 September 2016, the defendant issued the policy bearing no. 35192844 to the life assured for the first proposal form (PAMB policy 1).

[5] Through another proposal form bearing No. 104222635 dated 29 September 2016, the life assured had applied and/or proposed to the defendant for another life insurance with a basic sum assured/death benefit of RM2 million (PAMB proposal 2). Thereafter, on 19 October 2016, the defendant issued the policy bearing 35201115 to the life assured for the second proposal form (PAMB policy 2).

[6] The plaintiff had been named as the nominee of the life insurance applied for in the first and second PAMB proposal forms.

[7] As per life policies, the insured event was the death of the life assured. The coverage provided by the two policies amounted to RM4 million in total.

[8] Under the first and second PAMB proposal forms, the defendant had expressly informed the life assured of his pre-contractual duty of disclosure. Notably, the PAMB policies 1 and 2, characterised as *uberrimae fidei* contracts (as provided for in para. 5(9) of Schedule 9 of the Financial Services Act 2013), had imposed upon the life assured a duty to act with the utmost good faith and to make full disclosure of all facts material to the contracts.

[9] In addition to the aforementioned two policies, the life assured had also acquired seven other policies from the defendant. Therefore, including the two contested policies, there were a total of nine policies with the defendant. The summary of these policies is as follows:

Policy With PAMB

Table 1

Date	Policy No.	Policy Owner	Life Assured	Remark
01.11.2005	33504536	Than Poo Ling **("Deceased")**	Deceased	BOP/21/para. 3 P's BoD/11-12 Death claim admitted & paid
01.12.2011	34332077	Deceased	Than Ho Yue	BOP/21/para. 3 P's BoD/5-10
01.12.2011 01.12.2011	34332083 34335568	Deceased Deceased	Than Ho Qi Than Chen Nam	Death claim admitted & pay or/waiver benefit effected
01.09.2014	34876001	Deceased	Than Ho Qi	
01.09.2014	34876955	Deceased	Than Ho Yue	
01.11.2014	34896579 ***lapsed in 2017**	Deceased	Deceased	BOP/21/para. 3 BOP/41/para. 5(b)
27.09.2016	**35192844**	**Deceased**	**Deceased**	**contested**
19.10.2016	**35201115**	**Deceased**	**Deceased**	**contested**

[10] On 31 August 2019, the life assured suddenly died. The death certificate issued by the public authorities recorded the cause of death as "decomposed body", and no external injuries were identified during the post-mortem examination. As of the trial date, the police have been unable to find any evidence of criminal involvement in the cause of death.

[11] Merely five days later, on 5 September 2019, the plaintiff submitted her claims for eight separate policies to the defendant. Simultaneously, the plaintiff also submitted her claims for nine other policies to AIA Berhad. Between AIA and the defendant, the life assured possessed 17 policies in total. Additionally, the life assured possessed policies with Allianz, indicating that the life assured had exceptionally extensive insurance coverage.

[12] During the process of handling and assessing the death claim, the defendant discovered and noted that the life assured held three life insurance policies with AIA Berhad, with the following particulars:

(i) dated 15 August 2016, with a sum assured of RM1.5 million (AIA policy 1);

(ii) dated 22 August 2016, with a sum assured of RM1 million (AIA policy 2); and

(iii) dated 20 September 2016, with a sum assured of RM1 million (AIA policy 3);

(collectively referred to as "the three AIA policies").

[13] The defendant discovered that AIA policy 1 and AIA policy 2 were already in force at the time of the life assured's application for the PAMB policy 1. Further, the three AIA policies were already in force at the time the life assured applied for the PAMB policy 2. It has come to the defendant's attention that the three AIA policies have been settled and paid out.

[14] The summary of the dates of purchase of the said PAMB and AIA policies is as follows:

Dates Of Purchase Of The PAMB And AIA Policies In 2016

Table 2

Date	Description	Page (CBD)
11.08.2016	AIA Proposal 1	B1/50-65
15.08.2016	**AIA Policy 1 – RM1.5 million**	**B1/18-96**
18.08.2016	AIA Proposal 2	B1/141-157
22.08.2016	**AIA Policy 2 – RM1 million**	**B1/97-188**
08.09.2016	PAMB Proposal 1	B2/53-69
19.09.2016	AIA Proposal 3	B1/234-250
19.09.2016	Large Amount Questionnaire	B3/3-6
20.09.2016	**AIA Policy 3 – RM1 million**	**B1/189-281**
27.09.2016	**PAMB Policy 1 – RM2 million**	B2/5-107
29.09.2016	PAMB Proposal 2	B2/157-173
19.10.2016	**PAMB Policy 2 – RM2 million**	B2/108-213

(emphasis added)

[15] The defendant's position was that, despite having full knowledge of his pre-existing three AIA policies at the time when he was applying for the PAMB policies 1 and 2, the life assured failed to disclose these existing policies in the PAMB proposal 1 and PAMB proposal 2. The existence of

the three AIA policies was a relevant and/or material fact, that the life assured had fraudulently omitted and/or suppressed. Consequently, the life assured made fraudulent misrepresentations of material facts (by failing to disclose the existence of the three AIA policies), in *inter alia*, the PAMB proposal 1 and PAMB proposal 2.

[16] The defendant also contended that the existence of the three AIA policies was a material fact because, had the existence of the three AIA policies (with a cumulative coverage of RM3.5 million) been disclosed to the defendant before the issuance of the PAMB policies 1 and 2, the defendant would not have issued the two policies (with a total sum assured of RM4 million) at that time.

[17] Consequently, due to the aforementioned fraudulent omissions, suppressions, and misrepresentation by the life assured, the defendant repudiated the plaintiff's claim and declared the PAMB policy 1 and PAMB policy 2 null and void from their inception, alleging fraudulent non-disclosure and/or suppression of information regarding the three AIA policies. As a result, the defendant rejected the death claim and informed the plaintiff of the decision through its letter dated 6 August 2020.

[18] On 30 August 2020, the plaintiff appealed to the defendant. However, the appeal was subsequently denied by the defendant on 20 October 2020.

[19] In response, the plaintiff, through letters of demand dated 15 March 2021 and 5 October 2021, issued by her solicitors, Messrs Mah Weng Kwai & Associates and Messrs Ng Kian Nam & Partners, formally contested the defendant's decision under para. 13, Division 1, Part 3, Schedule 9 of the Financial Service Act 2013 (FSA). The plaintiff emphasised that the life assured's death occurred more than two years after the effective date of the PAMB policies 1 and 2, surpassing the two-year incontestability period. Additionally, the plaintiff argued that no fraud or criminal element related to the deceased's death had been identified by the police.

[20] Hence, the plaintiff filed this action seeking the defendant to reinstate both PAMB policy 1 and PAMB policy 2.

Witnesses

[21] The plaintiff herself was the sole witness who testified for the plaintiff:

(i) Chong Lai Keng – PW1.

[22] Three witnesses testified for the defendant and they are as follows:

(i) Tong Mei Ying – DW1

(ii) Poon Yoke Lai – DW2

(iii) Tan Hooi Mee (Eunice) – DW3.

A **The Agreed Issues To Be Tried**

[23] The agreed issues to be tried are:

(i) whether the defendant is entitled to repudiate the plaintiff's death claim which was made under Policy No. 35192844 and No. 35201115 which had been enforced for more than two years before the death of the life assured and declared the two policies as null and void from the beginning based on the reason of fraudulent non-disclosure and/or fraudulent misrepresentation under the FSA.

(ii) whether the plaintiff is entitled to the remedies prayed for in paras. 18(a) to (h) of the statement of claim filed herein.

(iii) is it reasonable to expect the life assured to disclose to the defendant in relation to the said AIA policies which were only bought within a time frame of one month when filling up the said first and second proposal form?

Findings Of The Court And Analysis Of The Evidence

[24] Upon perusing the cause papers and having evaluated the evidence in totality and upon considering the written and oral submission by the plaintiff and the defendant, I dismissed the plaintiff's claim and my reasons are stated below.

[25] I agree with the learned counsel for the defendant that the primary issue for this court to deliberate and determine is whether the defendant is entitled to repudiate the plaintiff's claim on the two policies due to the life assured's fraudulent non-disclosure and/or fraudulent misrepresentation, in accordance with para. 13, Division 1, Part 3, Schedule 9 of the FSA. While addressing this issue, I held the belief that issues 2 and 3 would also be resolved.

Whether The Defendant Is Entitled To Repudiate The Plaintiff's Death Claim Made Under PAMB Policy 1 And Policy 2 And Declare The Two Policies As Null And Void From Their Inception Which Had Been Enforced For More Than Two Years Before The Death Of The Life Assured Due To The Life Assured's Fraudulent Non-disclosure And/Or Fraudulent Misrepresentation, In Accordance With Para. 13, Division 1, Part 3, Schedule 9 Of The FSA

[26] In addressing the question above, the court first had to determine whether the defendant had proven that the life assured had committed fraudulent non-disclosure and/or fraudulent misrepresentation of material facts.

[27] Before delving into the evidence presented by the parties on the aforementioned issue, it is essential to grasp the legal framework relevant to the factual circumstances of this case.

[28] In the realm of common law, there exists a fundamental principle governing parties entering into a contract of insurance – a duty to exercise the utmost good faith or in its Latin iteration, *uberrimae fidei*. This principle comprises two mandatory duties (see: para. [490.182] of the *Halsbury's Laws of Malaysia*, Vol. 20, 2017 Reissue):

(i) that either party must disclose all material facts; or

(ii) that either party must not make a misrepresentation, however innocently or honestly made, of a material fact.

[29] The *uberrimae fidei* principle is also entrenched in Part 3, Schedule 9, of the FSA. Schedule 9 became effective on 1 January 2015, introducing a new duty of disclosure and representations that consumers must adhere to when engaging in, modifying, or renewing insurance contracts with insurers. As elucidated in the explanatory note of the FSA Bill, this new duty requires consumers to exercise reasonable care to prevent any misrepresentation during the pre-contractual phase. Specifically, consumers have an obligation to ensure the accuracy and completeness of their responses to the insurer's inquiries. In cases where a consumer deliberately or recklessly makes a misrepresentation, the insurer has the authority to void the contract of insurance and decline any claim settlements.

[30] As the policies in question, in this case, were "consumer insurance contracts", the governing provision concerning the life assured's pre-contractual duty of disclosure is in para. 5, Schedule 9 of the FSA. The provision reads as follows:

> 5(1) Before a consumer insurance contract is entered into or varied, *a licensed insurer may request a proposer who is a consumer to answer any specific questions that are relevant to the decision of the insurer* whether to accept the risk or not and the rates and terms to be applied.
>
> (2) It is the duty of the consumer *to take reasonable care* not to make a misrepresentation to the licensed insurer when answering any questions under subparagraph (1).
>
> …
>
> (9) *Nothing in this Schedule shall affect the duty of utmost good faith to be exercised by a consumer* and licensed insurer in their dealings with each other, including the making and paying of a claim, after a contract of insurance has been entered into, varied or renewed.
>
> (emphasis added)

[31] The consumer's evaluation adheres to the "reasonable consumer" standard, as specified in para. 6, Schedule 9 of the FSA. In essence, the FSA's definition of a "consumer" aligns with the everyday person, akin to the mythical man on the Clapham omnibus. Paragraph 6(2) states as follows:

A (2) Subject to subparagraph (3), the standard of care required of the consumer under subparagraphs 5(2) and (4) **shall be what a reasonable consumer in the circumstances would have known.** (emphasis added)

[32] Further, it is worth noting a statutory presumption outlined in B para. 7(8) of Schedule 9 of the FSA. This presumption explicitly declares that any information requested by the insurer in a proposal form is deemed relevant to the insurer's evaluation. Paragraph 7(8) states as follows:

(8) Unless the contrary is shown, **it is to be presumed that the consumer knew that a matter about which the licensed insurer asked a clear and** C **specific question was relevant to the insurer.** (emphasis added)

[33] In this case, the defendant repudiated liability under the two PAMB policies issued by the defendant to the life assured, declared the policies null and void from inception, and rejected the death claim submitted by the plaintiff. The defendant's decision was based on the assertion that the life D assured had failed to make full disclosure of the existence of the three AIA policies valued at RM3.5 million, constituting fraudulent non-disclosure because the existence of the three AIA policies was a material fact.

[34] In the instant position, the burden rested upon the defendant to prove that the life assured had committed fraudulent non-disclosure and/or E fraudulent misrepresentation of material facts. This obligation arose because PAMB policies 1 and 2 were initiated on 27 September 2016 and 19 October 2016, respectively, and the life assured died on 31 August 2019. Consequently, the said policies had been in effect for over two years when the life assured died. Pursuant to para. 13, Division 1, Part 3, Schedule 9 F of the FSA, when a life insurance contract has been in force for a period exceeding two years during the insured's lifetime, such a contract cannot be avoided by the defendant on the grounds that a statement made or omitted in the insurance proposal, or in a report from a doctor, referee, or any other person, or in a document leading to the issuance of the life policy was G inaccurate, false, or misleading unless the defendant can demonstrate that the statement pertained to a material matter or suppressed a material fact and that it was fraudulently made or omitted to be made by the life assured. The aforementioned para. 13 of Schedule 9 reads as follows:

Paragraph 13 – Non-contestability for life insurance contracts

H (2) *Where a contract of life insurance has been in effect for a period of more than two years during the lifetime of the insured,* such a contract shall not be avoided by a licensed life insurer on the ground that a statement made or omitted to be made in the proposal for insurance or in a report of a doctor, referee, or any other person, or in a document leading to the issue of the life I policy, was inaccurate or false or misleading *unless the insurer shows that the statement was on a material matter or suppressed a material fact and that it was fraudulently made or omitted to be made* by the policy owner or the insured.

(3) For the purposes of subparagraph (2), "*material matte*r" or *"material fact" means a matter or fact which, if known by the licensed life insurer, would have led to its refusal to issue a life policy to the policy owner or would have led it to impose terms less favourable to the policy owner than those imposed in the life policy.*
(emphasis added)

[35] It is uncontested that the life assured had fully completed and signed the proposal forms for PAMB policy 1 and PAMB policy 2, which included the "your lifestyle profile" (lifestyle profile) and the "large amount questionnaire" (LAQ). Additionally, he affirmed the truthfulness, completeness, and accuracy of his responses in both proposal forms. The plaintiff, PW1, acknowledged that, in both the proposal forms and the LAQ, the life assured had declared that he had provided the answers to the best of his knowledge and had not withheld any material information.

[36] There is no dispute that the life assured had acquired a total of eight policies from the defendant, with six of them having been fully paid, and the remaining two being the subject of this legal action.

[37] It is a matter of record that the life assured had purchased three additional AIA policies valued at RM3.5 million, which were issued on the following dates: RM1.5 million for the AIA policy 1 on 15 August 2016, RM1 million for the AIA policy 2 on 22 August 2016, and RM1 million for the AIA policy 3 on 20 September 2016.

[38] PW1 confirmed that the life assured had informed her about his application for the three AIA policies. During cross-examination, she also acknowledged that the life assured had not disclosed the existence of these three AIA policies in his proposal forms, lifestyle profile, and LAQ when applying for the PAMB policy 1 and PAMB policy 2 with the defendant.

[39] PW1 agreed that the life assured's income for the relevant year was documented in his tax returns. She also admitted that she did not provide the defendant with any supporting documents to prove that the life assured's income justified the RM7.5 million coverage when the defendant requested such evidence during her submission of the death claim.

[40] PW1 also further agreed that any reasonable person would have recalled and disclosed the existence of the three AIA policies while completing the defendant's proposal forms for the policies.

[41] The defendant's witnesses provided testimony regarding the grounds for rejecting the claim. DW2, Poon Yoke Lai, the assistant director in the Next Gen Underwriting Department, and DW3, Tan Hooi Mee (Eunice), the assistant director in the defendant's Customer Onboarding-Agency Department, stated that had the defendant been informed about the existence of the three AIA policies, they would not have issued PAMB policy 1 and PAMB policy 2 to the life assured. This decision was based on the

underwriting guidelines that were applicable to a working, earning or employed adult in 2016. The guidelines applied to an earning adult under the age of 50 specified that the maximum sum assured or death benefits on their life should not surpass 25 times their earned annual income. Consequently, considering that the life assured's annual income ranged from RM130,000 to RM150,000, the allowable maximum life coverage should have been between RM3.5 million and RM4 million only. Issuing PAMB policy 1 and/or PAMB policy 2 for RM2 million each would have resulted in the life assured being over-insured.

[42] The defendant asserted that due to the fact that PAMB proposal 1 had a basic sum assured or death benefit of RM2 million, under the defendant's financial underwriting guidelines, the life assured was required to submit an LAQ. DW3 confirmed that she had issued a "new business requirement form" to the life assured's agent, Chong Lai Ping, and requested the completion of the LAQ. Subsequently, the LAQ was filled out and emailed to the defendant on 20 September 2016. DW3 verified that she had relied on the LAQ during the underwriting process for the life assured's application for the mentioned policies.

[43] DW2 stated that the underwriting process primarily consists of two key components, namely medical underwriting and financial underwriting. Financial underwriting entails assessing a life insurance application by comparing the applicant's income and financial situation to the desired coverage amount and their existing insurance, ultimately determining the possible coverage level or benefits that can be provided, if any.

[44] DW2 further explained that, in accordance with the general principles of insurance law, a contract of insurance serves as a means of indemnity. Therefore, life insurance is not intended as a windfall and should not be utilised for unjust enrichment. Instead, its purpose is to cover financial losses stemming from the insured's death or inability to work, serving as a financial support mechanism for the insured or their beneficiary. As such, financial underwriting guidelines are established to determine the maximum total sum assured to be provided on the insured's life.

[45] The defendant's witnesses further confirmed that the life assured would be considered over-insured if PAMB policy 1 and PAMB policy 2 were issued. Consequently, the defendant would have requested the life assured to provide supporting documentation regarding his income and financial condition to substantiate a life insurance coverage exceeding RM7.5 million, which represented the total sum assured on the life assured's life following the issuance of PAMB policy 1 and PAMB policy 2.

[46] Through PAMB proposal form 1 and PAMB proposal form 2, the defendant had explicitly apprised the life assured of his pre-contractual duty to disclose information. In response, the life assured affirmed that the

information provided in both proposal forms, as well as any information furnished to the defendant, was truthful, complete, and devoid of any omissions. This same confirmation was reiterated when the life assured signed the LAQ.

[47] However, following the defendant's reception of the plaintiff's death claim and discovery of the three AIA policies, the defendant extended the opportunity to the plaintiff to provide adequate evidence to substantiate the life insurance coverage, which exceeded RM5.6 million (in relation to PAMB policy 1) or RM7.6 million (in relation to both PAMB policies 1 and 2). This request was made through the defendant's letters dated 2 October 2019, 21 November 2019 and 30 December 2019. Regrettably, despite the defendant's numerous requests, the plaintiff could neither produce nor provide sufficient proof to justify the said life insurance coverage. Therefore, the defendant could only process the plaintiff's claim based on the available information at the material time.

[48] As previously elucidated, para. 5 of Schedule 9 of the FSA which pertains to the pre-contractual duty of disclosure for consumer insurance contracts, imposed a statutory duty on the consumer to exercise reasonable care in avoiding any misrepresentation to the insurer. This duty was especially significant when responding to specific questions posed by the insurer, which were essential in the insurer's determination of whether to accept the risk and in establishing the applicable rates and terms. The principle of *uberrimae fidei* remained applicable to the parties involved in an insurance contract. In accordance with this principle, the consumer was held to a standard of care defined as that of a 'reasonable consumer'. Consequently, based on the underpinning of *uberrimae fidei*, the life assured, as the consumer, bore the duty of utmost good faith, necessitating full disclosure of all material facts within his knowledge. In *Leong Kum Whay v. QBE Insurance (M) Sdn Bhd & Ors* [2006] 1 CLJ 1; [2006] 1 MLJ 710, the Court of Appeal held as follows:

> [15] It is settled beyond dispute that a contract of insurance is one that imposes a mutual duty on the parties to it to act *uberrimae fides* towards each other. On the part of the insured, he or she must make full disclosure of all material facts. **It is not for him or her to decide in his or her own mind what is material.** The duty is on the insured to make full disclosure of material facts within his knowledge. (emphasis added)

[49] After careful examination of the evidence, the submitted documents, and the relevant law, I concluded that the existence of the three AIA policies constituted a "material fact". This finding stemmed from the evidence that their disclosure would have had a negative impact on the defendant's underwriting decision. If the defendant had been aware of the three AIA policies, they would not have issued the policies in question. Further, based

on the factual circumstances and the sequence of events in this case, I concluded that the life assured had deliberately concealed or suppressed and had fraudulently misrepresented the existence of the three AIA policies. The rationale for this conclusion is explained below.

The Existence Of The Three AIA Policies

[50] The existence of the three AIA policies is undisputed. The plaintiff had acknowledged the existence of the three AIA policies in her pleadings and during the cross-examination.

[51] Thus, the three AIA policies exist.

Whether There Was A Misrepresentation By The Life Assured By Not Disclosing The Existence Of The Three AIA Policies

[52] Let's review some relevant questions that the defendant had included in the proposal forms, lifestyle profile, and the LAQ. In the proposal forms, question 3.10a was presented as follows:

> 3.10a. Has any proposal for life or health assurance on your own life or for insurance against accident or critical illness ever been made to this or any other company (including proposals about to be submitted)? If yes, please provide details.

[53] The same information was also sought in part 6 of the lifestyle profile, which was submitted along with the proposal forms. Part 6 read as follows: "your insurance information (insurance information of life to be assured)". In response, the life assured had indicated, "refer to Prudential policies".

[54] Question 3 in the LAQ, is stated as follows:

> Details of all insurance presently in force or solicited simultaneously on applicant, business associates or family members

[55] In reply to all the aforementioned questions, the life assured had only disclosed his existing insurance policies with the defendant and had omitted to disclose the three AIA policies.

[56] Having examined the questions in the proposal form in particular, I find that question 3.10a in both the proposal forms for PAMB policy 1 and PAMB policy 2 presented clear and specific inquiries directed at the life assured regarding all his existing policies with PAMB or other insurers, including proposals. The life assured comprehended the question and responded by stating, "Life A PAMB". In doing so, he disclosed the policies he had purchased from the defendant dating back to the year 2005 (see Table 1).

[57] Learned counsel for the plaintiff argued that question 3.10a was ambiguous, unspecific, and confusing. While it was not the plaintiff's pleaded case that question 3.10a was ambiguous, unspecific, and confusing, it is my considered view that if the question were indeed ambiguous,

unspecific, and confusing, the life assured would not have disclosed his earlier policies with the defendant, purchased several years prior. The fact that he did disclose his earlier policies indicates his awareness of the obligation to disclose existing policies and his understanding of the question. However, he chose not to disclose AIA policies 1 and 2 when completing his proposal form for PAMB policy 1, and AIA policies 1, 2, and 3 when filling out the second proposal form for PAMB policy 2.

[58] Hence, the plaintiff's assertion that question 3.10a was ambiguous, unspecific, and confusing was without merit.

[59] It is pertinent to note the proximity of the dates when the three AIA policies were proposed and issued to the proposal and issuance dates of the PAMB policies. The first proposal was for AIA policy 1, made on 11 August 2016, and the last on 19 October 2016, coinciding with the issuance of PAMB policy 2 (for ease of reference see Table 2). Within this two-month and eight-day period from 11 August 2016 to 19 October 2016, the life assured had proposed and acquired the three AIA policies along with the PAMB policy 1 and PAMB policy 2, amounting to RM7.5 million. It is my finding that it would have been implausible for a reasonable man to forget the existence of each of these policies within such a short timeframe. Moreover, each policy held a substantial value of RM1 million or more.

[60] Learned counsel for the plaintiff had argued that the life assured might not have been aware of the issuance dates of the AIA policies. However, I find that question 3.10a was unambiguous, explicitly encompassing any "proposals about to be submitted". This means that the life assured had to disclose even the proposals that he had submitted to AIA when submitting the PAMB proposal forms. Therefore, at the very least, even if the court were to consider all the dates on the proposal forms, they strongly suggest that the life assured possessed knowledge of the proposal forms he had submitted for AIA policies 1 and 2, which were on 11 August 2016 and 18 August 2016, respectively, when he submitted the proposal form for PAMB policy 1 on 8 September 2016, a mere 28 days after the AIA proposal 2. Furthermore, the AIA proposal 3 was submitted on 19 September 2016, and the proposal form for PAMB policy 2 was submitted on 29 September 2016, only ten days later. Nevertheless, despite the noticeably short timeframe between the said proposal forms, the life assured did not disclose any of the proposal forms he had submitted to AIA in both PAMB proposal forms. However, he did indeed disclose his earlier policies with the defendant, dating back to the year 2005. Based on the preceding information, it is evident, as clear as day, that there was a misrepresentation by the life assured when he omitted to disclose the AIA policies upon submitting the PAMB proposal forms. It is essential to note that the life assured had an obligation to disclose the policies that were later issued, which he had also failed to do.

[61] In my assessment, any reasonable person would have considered the three AIA policies, amounting to RM3.5 million, when completing the proposal forms for PAMB policy 1 and PAMB policy 2. Given the significant sums at stake and the proximity of the dates, one would reasonably recall the three AIA policies purchased only a few weeks prior when applying for the PAMB policy 1 and PAMB policy 2.

[62] I concur with learned counsel for the defendant that any ordinarily prudent individual would have recalled and disclosed the existence of the three AIA policies, taking into consideration the proximity and contemporaneous nature of the dates between the AIA and PAMB policies. It would have been inconceivable for a person of sound mind to overlook such substantial policies, which had been recently applied for. The first and second AIA policies had already been issued by AIA when the life assured made an application for PAMB policy 1. Furthermore, all three AIA policies, with a combined value of RM3.5 million, had been issued by the time the life assured applied for PAMB policy 2, and at that juncture, PAMB policy 1 had also been issued. Therefore, these undisputed facts unmistakably indicate a deliberate suppression and/or concealment of material facts by the life assured. There was an intentional misrepresentation on the part of the life assured when he completed the PAMB proposal 1 and PAMB proposal 2 without disclosing that he had already proposed and/or obtained the three AIA policies.

[63] Further, I agree with learned counsel for the defendant's contention that the plaintiff's position that question 3.10a of the proposal forms is ambiguous, unspecific, and confusing is not pleaded. Thus, this court ought not to consider any non-pleaded facts. The law on this issue is settled. 'Parties are bound by their pleadings and are not allowed to adduce facts and issues which they have not pleaded'. 'The courts should only consider the pleaded case of the parties before them' (see: *RHB Bank Bhd v. Kwan Chew Holdings Sdn Bhd* [2010] 1 CLJ 665; [2010] 2 MLJ 188; *Samuel Naik Siang Ting v. Public Bank Bhd* [2015] 8 CLJ 944; [2015] 6 MLJ 1; *He-Con Sdn Bhd v. Bulyah Ishak & Anor And Another Appeal* [2020] 7 CLJ 271; [2020] 4 MLJ 662).

The Materiality Of The Non-disclosure

[64] As defined in para. 13(3) of Schedule 9 of the FSA, "material fact" means a matter of fact which, if known by the insurer, would have led to its refusal to issue a life policy to the policy owner or would have led it to impose terms less favourable to the policy owner than those imposed in the life policy.

[65] Therefore, whether the three AIA policies were material is a question of fact.

[66] The defendant, through the testimonies of DW2 and DW3, successfully established that the existence of the three AIA policies constituted a "material fact". Their uncontroverted and unchallenged evidence stated that had the defendant been aware of the three AIA policies, the life assured would not have been eligible for additional coverage under the two PAMB policies, as the life assured's income ranged from RM130,000 to RM150,000 per annum. In the absence of any rebuttal evidence by the plaintiff regarding materiality and underwriting presented by the defendant, this court accepted the testimonies provided by DW2 and DW3. I took guidance from the Federal Court case of *Takako Sakao v. Ng Pek Yuen & Anor* [2010] 1 CLJ 381; [2009] 6 MLJ 751. The Federal Court held as follows:

> [3] … Taking the first issue, it is significant that in the present instance the first respondent did not attend court nor give evidence nor take any part in the case. All she did was merely to put forward arguments on why the appellant's caveat ought to be removed. She could have, if she wished, given evidence and challenged the appellant's evidence. But as already noted she refrained from doing that. On the facts of this case, there were two persons who were privy to the terms of the arrangement in question and the details of the payments made and the purpose for which they were made: the appellant and the first respondent. The appellant took the witness stand and gave her evidence on the terms of the arrangement and about the sums of money she had provided and the purpose for which they were provided. *No evidence was called on the part of the first respondent to refute the appellant's testimony. Such an important omission was missed by both courts below.*
>
> [4] In our judgment, two consequences inevitably followed when the first respondent who was fully conversant with the facts studiously refrained from giving evidence. In the first place, the evidence given by the appellant ought to have been presumed to be true. As Elphinstone CJ said in *Wasakah Singh v. Bachan Singh* (1931) 1 MC 125 at p. 128:
>
> > If the party on whom the burden of proof lies gives or calls evidence which, if it is believed, is sufficient to prove his case, then the judge is bound to call upon the other party, and has no power to hold that the first party has failed to prove his case merely because the judge does not believe his evidence. At this stage, the truth or falsity of the evidence is immaterial. For the purpose of testing whether there is a case to answer, all the evidence given must be presumed to be true.
>
> Now, what the trial judge did in the present case is precisely what he ought not to have done. He expressed dissatisfaction with the appellant's evidence without asking himself that most vital question: does the first defendant/respondent have a case to answer? This failure on the part of the trial judge is a serious non-direction amounting to a misdirection which occasioned a miscarriage of justice. *The trial judge was at that stage*

A *not concerned with his belief of the appellant's evidence. She had given her explanation as to the discrepancies in the figures. And her evidence does not appear to be either inherently incredible or inherently improbable. In these circumstances it was the duty of the judge to have accepted her evidence as true in the absence of any evidence from the first respondent going the other way. He however failed to direct himself in this fashion thereby occasioning a serious miscarriage of justice.*

B (emphasis added)

[67] Additionally, there is also a statutory presumption that all matters queried in a proposal form are material (as per schedule 9, para. 7(8)).

Whether The Life Assured Had Committed Fraudulent Non-disclosure

C **[68]** Section 17 of the Contracts Act 1950 defines fraud as follows:

17. "Fraud" includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

D (a) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true;

(b) **the active concealment of a fact by one having knowledge or belief of the fact;**

E (c) a promise made without any intention of performing it;

(d) any other act fitted to deceive; and

(e) any such act or omission as the law specially declares to be fraudulent. (emphasis added)

F **[69]** It is settled that the standard of proof for fraud in a civil case is on the balance of probabilities. The Federal Court in *Sinnaiyah & Sons Sdn Bhd v. Damai Setia Sdn Bhd* [2015] 7 CLJ 584 held:

Held (4) – The correct principle to apply is as explained *In re B (Children)* where it was stipulated that at law, there are only two standards of proof, namely beyond reasonable doubt for criminal cases and on the balance of probabilities for civil cases. **As such, even if fraud is the subject in a civil claim, the standard of proof is on the balance of probabilities.** There is no third standard. Therefore, it is up to the presiding judge, after hearing and considering the evidence adduced as being done in any other civil claim, to find whether the standard of proof has been attained. The criminal aspect of the allegation of fraud and the standard of proof required is irrelevant in the deliberation. (emphasis added)

[70] Fraud could be inferred from circumstantial evidence, with the additional condition that there had to be a basis of evidence and not just mere suspicion. In the case of *CGU Insurance Bhd v. Asean Security Paper Mills Sdn Bhd* [2006] 2 CLJ 409; [2006] 3 MLJ 1, Gopal Sri Ram JCA (as His Lordship then was) held:

While mere suspicion is insufficient, it is not the law that a litigant who alleges fraud must unravel each and every act of the person accused of fraud. Like any other fact, *fraud may be inferred from circumstantial evidence with the added proviso that there must be a foundation of evidence and not mere suspicion.* We would, in this context refer to *Satis Chandra Chatterji v. Satish Kantha* AIR 1923 PC 73 where Lord Atkinson said:

> *Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who make them – proved by established facts or inferences legitimately drawn from those facts taken together as a whole.* Suspicions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unraveled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dexterous knave would escape. (emphasis added)

[71] In the Federal Court case of *PJTV Denson (M) Sdn Bhd & Ors v. Roxy (Malaysia) Sdn Bhd* [1980] 1 LNS 55; [1980] 2 MLJ 136, Raja Azlan Shah CJ (as His Highness then was) expressed as follows:

> **"Whether fraud exists is a question of fact, to be decided upon the circumstances of each particular case.** Decided cases are only illustrative of fraud. **Fraud must mean "actual fraud, *ie*, dishonesty of some sort"** for which the registered proprietor is a party or privy. Fraud is the same in all courts, but such expressions as 'constructive fraud' are…inaccurate." But "'fraud' … implies a wilful act, on the part of one, whereby another is sought to be deprived, by unjustifiable means, of what he is entitled." (per Romilly M.R. in *Green v. Nixon* (1857) 23 Beav. 530 & 535.
>
> (emphasis added)

[72] Assessing the life assured from the standpoint of a reasonable consumer and by s. 17 of the Contracts Act 1950, it could be considered fraudulent on his part if he had possessed knowledge or belief of the fact, namely, his own three proposals to AIA, and chose to conceal it. Drawing from the evidence presented before me, I find that the life assured had knowledge of his three AIA policies and chose to conceal it when he applied for the two PAMB policies. I will elucidate the rationale behind my decision.

[73] Upon examining the temporal proximity between the proposal and purchase dates of both the AIA policies and the PAMB policies, it seems implausible that the life assured had overlooked or failed to recall the existence of the three AIA policies when completing the PAMB proposal forms. Within a span of merely seven weeks, starting on 11 August 2016 (AIA proposal 1) and culminating on 29 September 2016 (PAMB proposal 2), the life assured had applied for a total of five policies amounting to RM7.5 million. This sum, RM7.5 million, represents a substantial financial commitment. Moreover, considering the life assured's annual income

ranging from RM130,000 to RM150,000, the magnitude of RM7.5 million in coverage is exceptionally significant. Thus, it is inconceivable that any reasonable person would forget or overlook the RM3.5 million worth of AIA policies in the short time during which he applied for the two PAMB policies. Nonetheless, it is essential to highlight that the life assured recalled policies acquired much earlier in 2005, more than 11 years prior, and promptly disclosed them. So, how could he then have forgotten policies proposed only a few weeks earlier? This is highly illogical and inherently improbable. It indisputably demonstrates that the life assured acted dishonestly when completing the PAMB proposal forms without disclosing the three AIA policies. Therefore, it is evident that the suppression of the three AIA policies was a conscious and deliberate action by the life assured.

[74] In the case of *Ulaganathan Muthiah v. Prudential Assurance Malaysia Bhd* [2020] 9 CLJ 435, Ong Chee Kwan JC (as His Lordship then was) held as follows:

> [52] However, the deceased had failed to disclose the splenectomy operation, ultrasound and diagnosis in the proposal form despite having been asked the respective clear and specific questions in the proposal form. **It can hardly be said that the deceased would have no knowledge of these matters.**
>
> [53] **Clearly, the deceased knew that his answers to the questions in the proposal form were untrue or misleading.** He did not care whether or not they were untrue or misleading and had acted in breach of his duty of *uberrimae fidei*. His answers were relevant to the defendant for its assessment of the risks and whether to accept the risks. (emphasis added)

[75] Further, in the case of *Toh Sek Cheong v. Great Eastern Life Assurance (M) Bhd* [2016] 1 LNS 1569; [2017] 8 MLJ 317 (affirmed by the Court of Appeal), the court held that:

> [51] The plaintiff denied any fraudulent suppression of material facts. *He alleged that he had forgotten about his spinal surgery and hypertension history at the time he signed the proposal form and was innocent of any deliberate non-disclosure. I do not believe him.*
>
> ...
>
> [53] In the light of these facts, I agree with counsel for the defendant *that it is absolutely illogical for the plaintiff to maintain that he could not remember his medical history during the execution of the proposal form in year 2001, but could recollect the details of his medical history in 2014 and 2015. I do not think the plaintiff was likely to forget about his spinal surgery and hypertension history.*
>
> [54] *It is abundantly clear the plaintiff is guilty of fraudulent suppression* of material facts when he declared in the proposal form on 6 November 2011 to the effect that he had not been treated for and never received any treatment for, *inter alia*, blood pressure, disorder and disease of bones, undergone any operation, or was previously hospitalised. He knew these

> statements were false concealment of his spinal surgery and hypertension history from the defendant. In other words he had fraudulently suppressed these facts. The defendant was thus entitled to avoid the policy on that ground. (emphasis added)

[76] I agree with the defendant's argument that this constituted a deliberate and conscious effort to secure a substantial level of coverage on his own life. Revisiting the chronological sequence of events, it becomes evident that the acquisition of the five policies occurred as a singular, premeditated transaction. Such a calculated action cannot be easily disregarded or forgotten within a matter of weeks. The only reasonable deduction to be drawn is that the life assured had engaged in fraudulent misrepresentation and/or concealment of these material facts from the defendant at the time of procuring the aforementioned PAMB policies.

[77] It is pertinent to note that the plaintiff made the respective claims within five days after the life assured's demise (about 17 policies in total). Consequently, she possessed knowledge of all the policies acquired by the life assured. This clearly indicated that the life assured had provided her with information regarding each policy, and thus the life assured was aware and had knowledge of the existence of the three AIA policies.

[78] Based on the aforementioned sequence of events, it is evident that there was active concealment of a fact by one having knowledge or belief of the fact on the part of the life assured *viz* the three AIA policies.

[79] The plaintiff raised the issue that the over-insured guidelines were merely internal knowledge and practice of the insurer, of which the life assured had no knowledge. However, I find this to be irrelevant since there exists a duty on the part of the life assured to disclose and respond to all inquiries with the utmost good faith. He had an obligation to disclose the three AIA policies, and he did not. This is an undisputed fact. Furthermore, as mentioned above, there is a statutory presumption that all matters queried in a proposal form are material.

[80] This court also finds that there were no provisions under the FSA that imposed a duty on the defendant to conduct due diligence before the issuance of the policies and/or within the two years from the inception of the policies as claimed by the plaintiff. This was also confirmed by learned counsel for the plaintiff when queried by the court. Instead, a pre-contractual duty was imposed on the life assured to provide a full disclosure, as he who desired to have the policies 'knows everything' and the defendant 'knows nothing'. Quoting Gopal Sri Ram JCA (as His Lordship then was) in *Leong Kum Whay v. QBE Insurance (M) Sdn Bhd & Ors* (*supra*) wherein it was held that:

A [16] I begin with *Rozanes v. Bowen* (1928) 32 L1L Rep 98 at p. 102 where Scrutton LJ said this:

> As the underwriter knows nothing and *the man who comes to him to ask him to insure knows everything, it is the duty of the assured, the man who desires to have a policy, to make a full disclosure to the underwriters.* without being asked of all the material circumstances, *because the underwriter knows nothing and the assured knows everything.* That is expressed by saying that it is a contract of the utmost good faith-*uberrimae fides.* (emphasis added)

B

[81] I find that the defendant had pleaded and presented the necessary particulars and material facts in respect of the life assured's fraud, and there was no issue on this matter.

C

[82] This court is also of the view that adverse inference should not be invoked against the defendant for the failure to call the agent, Chong Lai Ping, as no allegations were raised against the agent. As such, I agree with learned counsel for the defendant that the defendant did not have to call the said agent. The duty to disclose all material facts remained with the life assured. I find the plaintiff's argument on this issue unsupported and unsubstantiated.

D

[83] In conclusion, based on the entire factual context, the undeniable inference was that the life assured had intentionally concealed his proposals for the three AIA policies, despite being directly questioned about them when he applied for the PAMB policies. Given that this action was a deliberate, premeditated, and wilful act on the part of the life assured, it can be established that the life assured acted fraudulently.

E

F **[84]** Therefore, based on all the facts and evidence presented before this court in its totality, this court finds that the plaintiff has failed to prove her claim on a balance of probabilities. This court, further, finds that the defendant had on the balance of probabilities, proven that the existence of the three AIA policies was a material fact, and the life assured was aware of the existence of the three AIA policies but had deliberately and fraudulently suppressed their existence. Hence, the defendant is entitled to repudiate the plaintiff's claim on the two PAMB policies because of the life assured's fraudulent non-disclosure and fraudulent misrepresentation in accordance with the provisions of the FSA.

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H **[85]** In light of the foregoing reasons, I, therefore, order that the plaintiff's claim be dismissed with costs of RM50,000.

I